

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 6100, 6104, 6105, 6106,  
6107, 6108, 6109, 6110, 6113, 6114, 6116, 6120, 6122,  
6123, 6125, 6126, 6130, 6131 and 6133 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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JEEVANBHAI MUMABHAI

Versus

POLICE SUB - INSPECTOR

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Appearance:

MR EE SAIYED for Petitioner

MR PRASHANT DESAI, GOVT. PLEADER for Resp Nos. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/09/1999

ORAL JUDGEMENT

Leave to amend the prayer as the learned Counsel  
for the petitioners submits that the petitioners really  
want to challenge the order of detention of the vehicles  
and not the N.C. complaints. Leave as prayed is granted.

2. In this group of petitions, the owners of tempo  
rickshaws, 19 in number, have challenged the detention of

their vehicles by respondent No. 1 and have prayed for releasing the vehicles.

3. The learned counsel for the petitioners submitted that the vehicles are purported to have been detained under Section 207(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") and that though the authorities have such power, when the petitioners approached respondent No. 2 authority under sub-section (2) of Section 207, one of the conditions being sought to be imposed is the payment of fine which may be levied by the learned Magistrate under Section 192A of the Act which forces the petitioners to plead guilty in the criminal trial launched pursuant to the filing of N.C. complaints. The petitioners submit that it takes away their right to defend themselves in the criminal proceedings.

4. On the other hand, the learned Government Pleader submits that since the petitioners have violated many of the provisions of the Act including carrying the passengers in a vehicle which is permitted to ply only for carrying goods, not having an insurance cover for the vehicles in question and such other requirements, the respondents are not bound to release the vehicles and the respondents are empowered to impose certain terms and conditions such as insurance cover and also an undertaking to ply the vehicles in accordance with the terms and conditions of the permit. It is further submitted that ultimately when the learned Magistrate may pass the orders under Section 192A, the driver might have changed and then it will not be possible for the authorities to recover the fine from the owner of the vehicle and that, therefore, it is necessary to impose certain terms and conditions including the payment or deposit of the amount.

5. Having heard the learned counsel for the parties, it appears to the Court that while the vehicles in question may be required to be released, certain conditions are required to be imposed. Hence, in the facts and circumstances of the case, the following order is passed :-

(i) The respondents shall release the vehicles of the petitioners referred to in para 3 of the respective petitions subject to and upon fulfillment of the following conditions :-

(a) Each petitioner shall deposit a sum of  
Rs.2000/- (Rupees Two thousand only) per

vehicle with the Regional Transport Officer, Bhavnagar, respondent No. 2 herein, as a deposit which shall abide by the outcome of the criminal proceedings pursuant to the N.C. complaint filed under Section 192A of the Motor Vehicles Act, 1988.

(b) Each petitioner shall get an insurance cover for the vehicle in question in accordance with law and produce the requisite documents in support of the said coverage before respondent No.2.

(c) Each petitioner shall produce all the relevant documents such as the registration certificate, permit and insurance policy before respondent No. 2.

(d) Each petitioner shall file an undertaking before respondent No. 2 that the petitioner shall ply the vehicle in accordance with the terms and conditions of the permit which is issued in favour of the petitioner in respect of the vehicle, without prejudice to his right to apply for another permit.

(ii) Upon the aforesaid conditions being complied with by the concerned petitioner, respondent No. 2 shall intimate to respondent No. 1 about the compliance with the aforesaid conditions and to release the vehicle immediately. As and when respondent No. 1 receives such an intimation from respondent No. 2, the vehicle in question shall be released forthwith.

6. All the petitions are accordingly disposed of.  
Rule is made absolute in each petition in terms of the aforesaid directions.

September 6, 1999 (M.S. Shah, J.)  
sundar/-